

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TOM A. MCWHIRTER,

Plaintiff,

v.

**CAROLYN W. COLVIN, Commissioner
of the Social Security Administration,**

Defendant.

§
§
§
§
§
§
§
§
§
§

No. 3:11-cv-608-BF

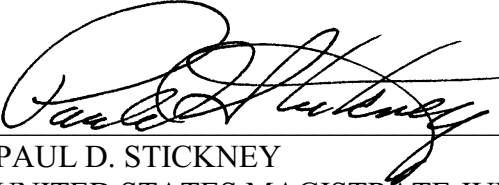
MEMORANDUM ORDER

Plaintiff Tom A. McWhirter, by and through his counsel of record, has filed a Motion for Attorney Fees Pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412 *et seq.*, seeking \$5,901.22 in attorney fees and reimbursement of \$350.00 in filing costs. Plaintiff’s fee request is based on an hourly rate of \$180.19 for 32.75 hours of work. *See* Plf. Mot. (Doc. 21), Binder Aff. at 2, ¶¶ 6, 8 & Exh. A. The Commissioner agrees with the hours stated and the \$350.00 in filing fees, but opposes Plaintiff’s requested hourly rate which is based on the Consumer Price Index (“CPI”) for all urban consumers for the South urban region. *See id.*, at 3, ¶ 11. Although the Commissioner concedes that she has previously agreed to comparable rates in other cases, she contends that the Fifth Circuit has stated that the Court should use the CPI rate for the Dallas-Fort Worth area. Def. Resp. (Doc. 23) at 2 (citing *Baker v. Bowen*, 839 F.2d 1075, 1084 (5th Cir. 1988)). Using the CPI rate for the Dallas-Fort Worth area results in a fee award of \$5,515.67, a difference of \$385.55.¹ Plaintiff has not replied to the Commissioner’s arguments.

¹ The Commissioner contends that Plaintiff is entitled to \$5,300.50 for work performed in 2011 (31.5 hours times \$168.27), plus \$215.17 for work performed in 2012 (1.25 hours times \$172.14). Def. Resp. at 2.

The Court agrees with the Commissioner that the proper award should be computed using the CPI rate for Dallas-Fort Worth. *See Benton v. Astrue*, No. 3:12-CV-0874-D, 2013 WL 818758 (N.D. Tex. Mar. 5, 2013) (sustaining similar objection by the Commissioner and granting motion for attorney's fees under the EAJA only to the extent based on the CPI rate for Dallas-Fort Worth). Accordingly, Plaintiff's motion for attorney's fees under the EAJA (Doc. 21) is GRANTED in part. Plaintiff is awarded \$5,515.67 in attorney's fees and reimbursement of the \$350.00 filing fee from the Judgment Fund.

SO ORDERED, April 29, 2013.



PAUL D. STICKNEY
UNITED STATES MAGISTRATE JUDGE